

AMS CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 16-11

Date Received: Jan 5, 2016

Title: Commercial Licensing Agreement - AMS 2016

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Initiator Organization Name / Routing Code: Policy Procurement Branch/AAP-110

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Guidance and Policy must be submitted with separate CR coversheets.

Policy

Or

Procurement Guidance

Real Estate Guidance

Other Guidance

Summary of Change:

Clarifying language added and unnecessary verbiage removed.

Reason for Change:

To make AMS T3.16 verbiage clearer.

Development, Review, and Concurrence:

AAP-100, AAP-110, ACQ-1, ACQ-2

Target Audience:

Acquisition workforce

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location:

T3.16

The redline version must be a comparison with the current published FAST version.

I confirm I used the latest published version to create this change / redline

or

This is new content

Links:

FAST Version 01/2016

CR 16-11

p. 1

<http://fast.faa.gov/docs/procurementGuidance/guidanceT3.16.pdf>

Attachments:

Redline and final.

Other Files:

None.

Redline(s):

Sections Revised:

3.16.A – Commercial Licensing Agreement

3.16.D - Appendix

Procurement Guidance - ~~(10/2015)~~ 1/2016

[T3.16 Commercial Licensing Agreement](#) Added 4/2006

[A Commercial Licensing Agreement](#) Added 4/2006 Revised 1/2016

[B Clauses](#) Added 4/2006

[C Forms](#) Added 4/2006

[D Appendix](#) Added 4/2006 Revised 1/2016

T3.16 Commercial Licensing Agreement **Added 4/2006**

A Commercial Licensing Agreement **Revised 1/2016 ~~Added 4/2006~~**

1. Commercial Licensing ~~agreements~~ Agreements (agreements) provide terms and conditions for the FAA ~~(we)~~ to use various commercial software programs that the we-Government does not own. Often there are embedded terms in the agreements that could create legal problems for ~~us~~ the FAA or the agreements may provide terms that conflict with other contract provisions. These conflicts also have potential to create legal problems, and both issues could ~~also~~ cause unexpected liabilities ~~for us~~.
2. The Contracting Officer (CO) should use the attached Appendix "Checklist For Review of Commercial Form Contracts" (software licenses, etc.) to examine pertinent clauses and agreement requirements to prevent unfavorable terms or conflict with ~~our~~ FAA contracts. ~~The checklist points out important actions the CO can take to minimize our risk in these agreements.~~
3. ~~Only the~~ The CO is authorized to the only one who should enter into Commercial Licensing Agreements ~~these agreements for us, except conference and meeting space licensing agreements.~~ Conference and meeting space licensing agreements may be authorized by Real Estate specialists.
4. The CO ~~should~~ must consult with legal counsel to assure-ensure that ~~we are adopting appropriate~~ agreement terms and conditions that minimize the our FAA's liability under these agreements, and strike a balance between the FAA's requirements needs and the contractor's proprietary interest.

B Clauses **Added 4/2006**

[view contract clauses](#)

C Forms **Added 4/2006**

[view procurement forms](#)

D Appendix **Revised 1/2016 ~~Added 4/2006~~**

Checklist for Review of Commercial Form Contracts (Software licenses, etc.)

1. Review AMS clause 3.5-18, "Commercial Computer Software-Restricted Rights," which either is, or should be added into, the basic contract. Delete all clauses and terms inconsistent with AMS, e.g., "breach," "payment," "termination," "binding arbitration."
2. Delete any "Governing Law" provision unless it specifies Federal law; e.g.i.e., "This agreement ~~shall~~must be subject to the laws of the state of Michigan."
3. Scrutinize the document for any attempts to impose additional license fees, i.e., if the software is to be used by anyone in the FAA not specifically identified in the agreement or contract.
4. Check for clauses that attempt to restrict use of the software to specific machines or networks in specific locations. Delete as necessary.
5. Delete any and all indemnity or attorney's fees provisions in contractor's favor. See Anti-Deficiency and Equal Access to Justice Acts, respectively.
6. Delete integration or merger clauses; the FAA contract will govern the rights and responsibilities of the parties, not a stand-alone license agreement.
7. Avoid open items (e.g., form blanks not filled in); these items must be negotiated and recorded prior to execution.
8. No incorporation of future prices, terms, etc. (For example, software licenses cannot automatically renew each year if the FAA will become obligated to pay a yearly licensing fee.)
9. Delete any interest-for-late-payment terms varying from the Prompt Payment Act.
10. Eliminate extensive warranty disclaimers, particularly disclaimers for defects in "third party products," where a subcontractor or supplier provides input into the final contract deliverable.
11. Watch for and delete clauses that give the contractor exclusive control over infringement litigation. The Department of Justice would represent FAA in any such litigation, and expect a certain amount of control.
12. Delete ~~liquidated~~ damages and/or liability clauses which are inconsistent with FAA clauses.

13. Delete injunctive release terms that could arbitrarily stop performance~~bring work to a halt.~~

14. Ensure that the FAA use of copyrighted material will not be considered an infringement of the copyright.